IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.18374 of 2004
Date of decision:24.8.2007

The Bichpari Cooperative Credit and Service Society Limited, Bichpari, District Sonepat

-----Petitioner

Vs.

Ganpat Rai and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Raman B.Garg, Advocate, for the petitioner.
Mrs. Abha Rathore, Advocate for the respondents.

JUDGMENT:

This petition seeks quashing of award dated 3.8.2004, Annexure P.1.

Case of the petitioner-management is that respondent No.1-workman was appointed as a Salesman in 1983. Complaints of embezzlement were received against him, which led to his suspension vide order dated 19.12.1995. He admitted the charge in his letters dated 19.9.1996 and 30.11.1995, Annexures P.18 and P.19 respectively. He was given charge sheet dated 2.9.1996, Annexure P.20 but he refused to accept the same. Accordingly, order dated 5.10.1996, Anneuxre P.22 was passed against him,

after recording a finding of misappropriation and absence from duty on the basis of record available with the petitioner-Society including the physical inspection done by the Inspector which led to suspension, deposit of the amounts by the workman and passing of the award against him. He preferred an appeal which was dismissed vide order dated 25.3.1997, Annexure P.23 affirming the finding of misappropriation. He then filed a petition to the Registrar under section 27 of the Haryana Cooperative Societies Act, 1984 without disclosing that his appeal had already been dismissed. This representation was accepted by the Deputy Registrar vide order dated 31.3.1998. The petitioner Society vide letter dated 29.6.1998, Annexure P.24, sought clarification and the Deputy Registrar vide letter dated 18.8.1998, Annexure P.25, directed that the order of the Registrar be carried out. It has been further stated that two awards dated 30.9.1996, Annexures P.6 and P.7 were also passed against the workman, wherein it was held that the workman had misappropriated the stocks of the petitioner-Cooperative Society. Recovery proceedings were also taken against the workman vide orders dated Annexure P.8 dated 10.2.1999 and Annexure P.9, P.10 and P.11 dated 25.12.2000. The workman also filed a suit which was dismissed as not maintainable on 10.1.2004, Annexure P.13, against which appeal was dismissed vide Annexure P.14 dated 14.8.2004.

The workman raised an industrial dispute which was referred for adjudication on 31.10.1998.

The management contested the claim of the workman by pointing out that the workman had embezzled a huge amount of the Cooperative Society for which charge sheet was sent to him which he refused to accept and on the basis of record including awards holding the petitioner responsible for embezzlement, he was dismissed from service which order was upheld in appeal.

The Labour Court upheld the claim of the workman on the ground that no enquiry was held before passing the order of dismissal.

The management examined Bhim Singh, Secretary of the Society MW1 who produced a copy of charge sheet Ex.M2 and photo copy of the envelope with the endorsement of refusal Ex.M3 and also other record.

The Labour Court observed that the postman was not examined to prove the endorsement and only photo copy was produced and not the original. Bhim Singh MW1 had recently joined and did not have personal knowledge about the matter. Documents Exs.M1 to M20 could not be held to have been proved properly. The orders passed after the date of termination could not be taken into account.

We have heard learned counsel for the parties and perused the record.

Contention raised on behalf of the petitioner is that the impugned award is perverse and the workman having failed to deny the allegation in the charge sheet, the impugned order of dismissal from service having been passed on the basis of record available with the society including awards Annexures P.6 and P.7 (Exs.M4 and M6 on the record of the Labour Court), admissions of the workman Annexures P.18 and P.19, order of dismissal from service dated 5.10.1996 was justified. The said order had been upheld in departmental appeal. The finding of the Labour Court that principles of natural justice had not been complied with, could not be accepted in a case where the charge was not denied and on the basis of record, the charge was established. The Labour Court wrongly observed that all documents against the workman were after the date of dismissal, while the awards Annexures P.6 and P.7 were prior to the date of dismissal. In the award Annexure P.6, it was recorded that the charge of misappropriation was established and respondent No.1 workman refused to receive the registered letter. Similarly, in award Annexure P.7, respondent No.1 had refused to receive notice of date of hearing and finding was recorded against him on the basis of record. In such a situation, mere non-examination of postman was of no consequence. Learned

counsel for the petitioner also referred to the statement of MW1 before the Labour Court who produced the original record and the documents were exhibited without any objection. He also made a statement that he had compared the copies which were exhibited with the originals.

Learned counsel for the petitioner submitted that in above situation, the finding that photo copies were wrongly admitted in evidence, was unsustainable and vitiated by error of law. Reliance was placed on judgment of the Hon'ble Supreme Court in **OA Oommen O.A.Abraham, Bangalore v. The Management of Hindustan Aeronautics Limited and another,** 1973 Lab. I.C 1002, wherein following observations from earlier judgment of the Hon'ble Supreme Court in **Sindhu Resettlement Corporation Limited v. Industrial Tribunal, Gujarat,** (1968 Lab IC 526), were relied upon:-

> ".....The High Court did not attach any value to the order of appointment dated 25th September, 1953 issued by Sindhu Hotchief on the ground (that) there was no proof of service of this order on the respondent. The High Court clearly fell into an error because in this case all the parties contented themselves with filing documentary evidence and no oral evidence was given by any party. At no stage was it challenged that document could not be relied on for want of regular proof.....
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> In proceedings before the Tribunal strict proof

> of documents in accordance with the provisions of the Evidence Act is not required."

He also relied upon Primary Coop. Credit and Service Societies Staff Services Rules, 1992 (for short, 'the Rules'). Rule 18.2 of the Rules is as under:-

> "18.2(9) No order of imposition of any of the penalties specified in Rule 17.1 shall be passed except after -
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> (a) informing the employee, in writing, of the charge or charges levelled against him and
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> (b) Giving the employee full opportunity to represent his case within 15 days from the receipt of notice."

It was submitted that in above circumstances, when the workman refused to appear before the arbitrator and awards had been passed against him and he had also refused to receive the charge sheet, the management was entitled to pass the order of dismissal on the basis of record and in such a situation, there was no violation of principles of natural justice. Learned counsel for the petitioner also relied upon letters of the workman dated 19.9.1996 and 30.11.1995, Annexures P.18 and P.19 to the writ petition (Exs.M1 and M2 on the record of the Labour Court), wherein the workman admitted the embezzlement. The said letters are as under:-

Annexure P-18

"I request that the amount of embezzlement in fertilizer in my name has almost been deposited in the society by me. Only small amount is outstanding which I shall deposit at the earliest and assure you not to repeat this mistake. Therefore, kindly issue an agenda for reinstatement of my service after consideration thereof in the committee. I shall be highly obliged."

Annexure P-19

"It is submitted that I had given a cheque of fertilizer on 24.11.1995. At that time due to rush of members, my fertilizer fallen short which reduced by 176 bags. Therefore, kindly grant me time upto 2.12.1995 so that I can make up the deficiency good in the fertilizer amount of society by obtaining amount of fertilizer and cheques of members. I shall deposit this amount with 17% interest, otherwise legal action be taken against me."

Learned counsel for respondent No.1 supported the impugned award and submitted that in absence of proof of endorsement of refusal of accepting the charge sheet, which was sent by registered envelope, the order of dismissal was against the principles of natural justice and mere writing of letters by the workman that he will make up the deficiency did not amount to

admission of guilt nor ex parte awards against the workman could be the basis of order of dismissal. It was further submitted that since the originals were not produced, the Labour Court was justified in not placing reliance on the documents produced by the petitioner-management. It was also submitted that the workman having already died during the pendency of this petition, there could not be any fresh enquiry.

The question for consideration is whether the award of the Labour Court can be held to be perverse to the extent it holds the order of termination of services of the workman to be in violation of principles of natural justice.

Before dealing with the question, it may be noticed that it is well-settled that before any punitive order is passed, the affected person must be given an opportunity of being heard. Mere refusal to receive charge sheet is not enough for passing of order. There has to be application of mind and finding of misconduct. At the same time, whether there is violation of principles of natural justice and whether as a result of said violation, any prejudice is caused, has to be seen, in the facts and circumstances of an individual case.

In Managing Director, ECIL v. B.Karunakar, (1993) 4 SCC 727, it was observed as under:-

"...The courts should avoid resorting

> to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment..." (Para 24).

The above principles were reiterated by the Apex Court in State Bank of Patiala and others v. S.K.Sharma, AIR 1996 SC 1669. It was also observed therein that ultimate object is to ensure fair hearing and avoid failure of justice. The court has to balance public interest with the requirement of natural justice.

A Constitution Bench of the Apex Court in J.M.Ajwani v. Union of India, 1967 SLR 471, observed as under:-

> "...The appellant never denied the truth of the statement attributed to him and those statements established

> the case of the State against him. It would be difficult to hold that because the Enquiry Officer did not act strictly according to the rules a fresh inquiry should be directed to enforce compliance with the Rules..." (Para 12).

Once on admitted facts, misconduct is proved, any procedural violation cannot be held to have prejudiced the case of the delinquent.

In **Mohd. Sartaj v. State of U.P.,**(2006) 2 SCC 315, it was observed as under:-

> **"18.** In Aligarh Muslim University v. Mansoor Ali Khan, AIR 2000 SC 2783, this Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Court referred to the decisions rendered in *M.C. Mehta* v. *Union of India(1999) 6 SCC 237,* the exceptions laid down in *S.L. Kapoor v. Jagmohan,,(1980) 4 SCC 379,* and *K.L. Tripathi* v. *State Bank of India, AIR 1984 SC 273,*where it has been laid down that not mere violation of natural justice but *de facto* prejudice (other than non-issue of notice) has to be proved.

The Court has also placed reliance in the matter of *State Bank of Patiala* v. *S.K. Sharma,(1996) 3 SCC 364,*and *Rajendra Singh* v. *State of M.P. (1996) 5 SCC 460,* where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd., (2005) 5 SCC 337,* this Court has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. In another recent judgment in *State of U.P.* v. *Neeraj Awasthi, (2006) 1 SCC 667,*while considering the argument that the principle of natural justice had been ignored before terminating the service of the employees and, therefore, the order terminating the service of the employees was bad in law, this Court has considered the principles of natural justice and the extent and the circumstances in which they are attracted. This Court has found in *Neeraj Awasthi case (supra)* that if the services of the workmen are governed by the U.P. Industrial

Disputes Act, they are protected under that law. Rules 42 and 43 of the U.P. Industrial Disputes Rules lay down that before effecting any retrenchment the employees concerned would be entitled to notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If retrenchment is to be effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principles of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not as a punitive measure but they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment.

19. In the present case, the appellants' case falls within the exception laid down in *S.L. Kapoor case(supra)* and other supporting cases, as admittedly, the appellants were not qualified and they did not possess BTC or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognised by the State Government as equivalent thereto at the time of their initial

appointment. In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and therefore no hearing was required before the cancellation of their services. In the present case, the cancellation order has been issued within a very short span of time giving no probability for any legitimate expectation to the appellants regarding continuation of their services. There was no separate appointment order issued in favour of the appellants but the memorandum dated 19-6-1985 wherein the list of selected candidates was published, provided that all the selected candidates must join their respective schools/colleges within 15 days and from this the nature of appointment made cannot be ascertained. Moreover, the cancellation order itself gives an opportunity that if they do hold and possess BTC qualification along with Intermediate qualification, they may contact and get the same verified on 14-8-1985 by the appointing authority and they may bring this to the notice of the authorities concerned. The copy of the order of cancellation was also sent to the Principal concerned of the institution with the remarks that he should relieve the Urdu teacher with immediate effect if he did not possess the certificate of passing the examination of Intermediate and BTC; and, if he possessed

> these certificates he should submit the same to the office of the District Basic Education Officer, Muzaffarnagar. Therefore, it is apparent that any person having the basic qualification for the appointment can produce it before the official concerned so that immediate steps can be taken with regard to the order of appointment cancellation.
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> **20.** In our opinion, on the above facts no prejudice has been caused to the appellants by not serving notice or giving hearing before the order of cancellation was issued."

Coming to the facts of the present case, it is patent from the record that the workman gave in writing that there was shortage of stocks of fertilizer and he sought time to make up the deficiency vide letters dated 30.11.1995 and 19.9.1996 reproduced above. On 30.9.1996, two awards were passed against the workman on the basis of evidence produced and it was recorded that the workman refused to receive the registered letter. The said awards became final. Charge-sheet was sent to the workman and as per endorsement on the registered envelope Annexure P.21, the workman refused to receive the charge sheet. Thereafter, order of dismissal dated 5.10.1996 Annexure P.22 was passed in the meeting of Managing Committee after recording a finding that the charges against the workman were established. Appeal against the

said order was dismissed. Before the Labour Court, MW1 Bhim Singh was examined, who produced the entire record and filed copies and made a statement that he had brought the originals and had compared the copies with the originals. No objection to production of copies was taken at the time when statement of MW1 Bhim Singh was recorded.

We are of the view that from the record, charge against the workman stood fully proved and the Labour Court failed to appreciate the record produced before it by wrongly observing that photo copies of the originals were not admissible when MW1 had clearly stated that he had produced the originals and no objection was taken to filing of copies of the record on behalf of the workman. It has not been shown that the awards passed against the workman had been disturbed in any proceedings. No doubt, postman was not produced to prove the endorsement of refusal, in view of over-whelming evidence on record which leads to only one conclusion that the charge against the workman stood established, it was not permissible to hold that dismissal of the workman was not justified.

Parameters for establishing misconduct in a departmental enquiry are not the same as are applicable to a criminal trial.

In view of above, while we hold that misconduct of the

workman was established and the impugned award is not sustainable, having regard to the fact that the workman had already rendered service for 12 years and he has also died now, we partly allow the writ petition and modify the impugned award to the effect that the punishment of termination will be substituted by punishment of compulsory retirement or termination so as not to affect any terminal benefits already accrued and such benefits will be computed and paid to the heirs of the workman after adjusting the dues of the petitioner-society, if any, within three months from the date of receipt of a copy of this order. The petitioner-society will be at liberty to pass a fresh appropriate order as per rules, in consonance with the order being passed by this Court.

The writ petition is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

August 24 , 2007 **(AJAI LAMBA)**
'gs' **JUDGE**